

Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 618

ARKANSAS FUEL OIL COMPANY, PETITIONER,

VS.

MAGRATH OIL COMPANY, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Sixth Circuit.

SIZER, CHAMBLISS & KEFAUVER,
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To the United States Circuit Court of Appeals for the Sixth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the Arkansas Fuel Oil Company, and respectfully petitions this Honorable Court to grant a writ of certiorari to review the opinion and judgment of the United States Circuit Court of Appeals rendered and entered on the 8th day of October, 1942, in this case, lately pending in said United States Circuit Court of Appeals for the Sixth Circuit, styled Arkansas Fuel Oil Company, appellant, vs. Magrath Oil Company, appellee, being cause No. 9082 of civil causes on the docket of said United States Circuit Court of Appeals for the Sixth Circuit, affirming a judgment of the United States District Court within and for the Southern Division of the Eastern District of Tennessee in said cause against your petitioner.

JUDGMENT OF THE COURT BELOW.

The judgment affirming the action of the District Court made by the United States Circuit Court of Appeals for the Sixth Circuit in said cause of Arkansas Fuel Oil Company, appellant, vs. Magrath Oil Company, appellee, which petitioner here seeks to have reviewed, appears on pages 509 and 510 of the printed transcript of the record filed herewith.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The Pleadings, Procedure and Action of the District Court.

This is a suit removed from the Circuit Court of Hamilton County, Tennessee, which sought to recover a judgment for $13,500 and also for cancellation of notes and deeds of trust securing debts. One ground set up for recovery was breach of contract in the delivery of gasoline inferior in quality to that specified. Ten thousand dollars ($10,000) in damages were sought because "plaintiff has lost many of its customers * * *" (R. 6). Another ground set up for recovery was for deceit in representing to a lessee that a former lessee sold 80,000 gallons of gasoline each month, this representation being made to induce the execution of a lease at a rental of $815 per month, when in fact the sales of the previous lessee had averaged but 31,000 gallons per month. The claim is that the "plaintiff lost more than $3,000 by the payment of excessive rent" (R. 7). Cancellation of the obligations was also prayed (R. 7).

Upon the trial before a jury there was a verdict for $7,500 on the first count, alleging enhanced damages for breach of contract (reduced to $5,000 by remittitur), and $3,000 on the second count, alleging deceit (R. 353

and 361). There being an indebtedness of $3,252.81, in consequence a net final judgment of $4,747.19 was entered (R. 361).

The Facts As to Breach of Warranty.

The facts are that gasoline of a certain quality and character was to be delivered. The conclusion from the verdict of the jury is that an inferior gasoline was delivered. However, the Magrath Oil Company knew the gasoline was inferior and accepted it, and then sold the gasoline to its customers, knowing that it was inferior to the gasoline that should have been delivered (R. 122, 123). Good-will and customer trade were lost in selling the gasoline. In this suit enhanced damages were recovered for loss of trade.[1]

The Facts As to Fraud and Deceit.

E. K. Magrath testified that it was "during the first month" that he discovered the alleged fraud (R. 42). He was asked what he did, and in effect said the Magrath Company did nothing (R. 42).

There is no evidence that the Magrath Company did anything at this time to seriously question the executory obligation. The Magrath Company accepted a suggestion that certain equipment not yet installed be installed (R. 42).

After having knowledge of the alleged fraud and deceit, the Magrath Company installed new grease racks and gasoline pumps that had not been installed before (R. 42).

This is a fair summary of the evidence as to what took place when the Magrath Company "discovered" fraud and deceit on the part of the lessor. The rent was not reduced at the time (R. 44). The Magrath Company, though claiming later to have been induced through fraud

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[1]The allegation in the original pleading is that there was a delivery of gasoline of inferior grade and quality, and that the plaintiff thereby "lost many of its customers and has suffered great damage" (R. 6).

and deceit to execute the lease, paid the full rental fixed in the lease for six consecutive months (R. 48).

Two of the partners went to Shreveport, the headquarters of petitioner, in August, 1938 (R. 293). They negotiated about the rental and secured an agreement to a reduction in the monthly rental of $200, or from $815 per month to $615 per month (R. 48, 49).

Apparently satisfied with this $200 a month concession, the Magrath Company then regularly paid the rental of $615. A new contract for the distribution or sale of gasoline was negotiated and made between the parties as of November 21, 1938 (R. 53). In other words, after six months of knowledge of the alleged deceit, the Magrath Oil Company accepted a rent concession of $200 (R. 46) and then continued at the modified rental of $615 per month until June or July, 1939 (R. 51, 293).

In March, 1939 (R. 411), the lease for a year ended, but both parties under its terms continued, at the lowered rental. In the summer of 1939 further concessions modified the lease so as to fix a rental of one cent per gallon (R. 293, 51). This was the rental the Magrath Oil Company now claims should have been charged for the fifteen or sixteen months the lease had been in effect (R. 7 and 37). This was the second modification of the lease sought and obtained by the respondent (R. 293). And all this time, during all these negotiations, there was not a hint that there would be a suit for fraud and deceit. On the other hand, the Magrath Company executed three notes and in fact was under no pressure regularly paying on one or the other of these notes.[2] These actions are clear and unequivocal evidence that the Magrath Oil Company was proceeding to carry out the lease contract and the gasoline sales contract with the hope both would be profitable.

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[2]With full knowledge of the gallonage, the Magrath Oil Company executed a $3,000 note dated April 22, 1938 (R. 19 and 24), a $1,200 note dated May 18, 1938 (R. 19 and 25), and a note for $641.34 dated November 7, 1938 (R. 20 and 25).

JURISDICTION OF THIS COURT.

The jurisdiction of this Court is based upon Section 240 of the Judicial Code, as amended by the acts of February 13, 1925, Ch. 229, Sec. 1, 43 Stat. 938; Title 28, U. S. C. A., Sec. 347, providing for review by this Court, by certiorari, of decisions of the Circuit Court of Appeals. The judgment of the United States Circuit Court of Appeals sought to be reviewed was entered on October 8, 1942 (R. 509, 510). A petition for a rehearing was duly filed by this petitioner, appellant in said Circuit Court of Appeals, within the time provided by the rules of said Circuit Court of Appeals (R. 511-527), and said petition for a rehearing was denied by said Circuit Court of Appeals on December 1, 1942 (R. 529).

QUESTIONS PRESENTED.

The questions of law presented by petitioner's petition herein for writ of certiorari are:

1. Whether in an action for damages for breach of warranty for sale of goods a purchaser of gasoline who knowingly accepted an inferior quality and sold the inferior quality to customers, and thus enhanced damages, can recover enhanced damages for loss of customers.

2. Whether in an action for fraud and deceit one who proceeds to do business under the obligation induced by the deceit and negotiates and secures concessions with respect to the obligation can recover damages for the deceit.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Court of Appeals erred in its failure to apply the law of Tennessee with respect to damages for breach

of warranty in the sale of goods, as set forth in an opinion of the Supreme Court of Tennessee in the case of *Lamborn & Co.* v. *Green & Green*, 150 Tenn. 38. The Supreme Court of Tennessee there held that a purchaser of goods of warranted quality who knowingly accepted and used an inferior quality and thus enhanced damages cannot recover enhanced damages. This question was not dealt with by the Court of Appeals in the disposition of this case.

2. The judgment of the Court of Appeals is grounded upon Section 7262 of Williams' Tennessee Code, and is expressly grounded upon the case of *Marcum* v. *Potter*, 148 Tenn. 251, and *Cotton Oil Co.* v. *Gin & Lumber Co.*, 138 Tenn. 58, and said judgment applies that Code section and those Tennessee cases to the facts in this suit for deceit. The Code section is part of the Law of the Sale of Goods, and has to do with the sale of goods only, and the two cases cited construe that Law, while the tort claim set up in this case was for fraud and deceit in inducing the execution of a lease, and not for the sale of gods, and said Code section and authorities have no application.

3. The Court of Appeals erred in failing to apply the law of Tennessee as set forth in the case of *Wells* v. *Holley*, 145 Tenn. 345, in which the opinion approved and the decision was expressly grounded on the case of *Simon* v. *Goodyear Metallic Rubber Shoe Company*, 105 Fed. 573, 52 L. R. A. 745, a case decided by the Sixth Circuit Court of Appeals in 1900. The Supreme Court of Tennessee there held that one who, having knowledge of deceit, proceeds with the execution of the obligation induced thereby, is precluded from asserting damages by reason of the deceit.

4. In this case the Circuit Court of Appeals for the Sixth Circuit held that in this suit for deceit your petitioner is liable in damages though the respondent after knowledge of the deceit continued performance of the

lease induced and sought and secured concessions favorable to it, and this conclusion of the Court is in conflict with a recent opinion of the Court of Appeals for the Eighth Circuit in the case of *Phillips Petroleum Co.* v. *Rau Construction Co.*, 130 F. 2d 499.

PRAYER.

Wherefore, petitioner prays that a writ of certiorari be issued by this Court directed to the United States Circuit Court of Appeals for the Sixth Circuit, to the end that the judgment of said Court of Appeals in said cause of Arkansas Fuel Oil Company, Appellant, vs. Magrath Oil Company, Appellee, No. 9082, be reviewed by this Court, as provided by law, and that upon such review the judgment of said Court of Appeals in said cause, of date October 8, 1942, be reversed, and that petitioner have such other relief as to the Court may seem appropriate.

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